



# PROPOSED RULE MAKING

**CR-102 (June 2004)**

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

Agency: Department of Health- Board of Osteopathic Medicine and Surgery

- ☒ Preproposal Statement of Inquiry was filed as WSR 06-11-091 ; or  
☐ Expedited Rule Making--Proposed notice was filed as WSR ; or  
☐ Proposal is exempt under RCW 34.05.310(4).

- ☒ Original Notice  
☐ Supplemental Notice to WSR  
☐ Continuance of WSR

**Title of rule and other identifying information:** (Describe Subject)

New Sections for Osteopathic Physicians WAC 246-853-600 Sexual Misconduct; WAC 246-853-610 Abuse; and Osteopathic Physician Assistants WAC 246-854-200 Sexual Misconduct; WAC 246-854-210 Abuse

The rules will specify the types of sexual misconduct and boundary violations, which include abuse, that will be considered unprofessional conduct for osteopathic physicians and osteopathic physician assistants.

**Hearing location(s):** St. Francis Hospital  
34515 9th Avenue S.  
Federal Way, Washington 98003

Date: Jan. 26, 2007Time: 9:00 a.m.**Submit written comments to:**

Name: Arlene Robertson

Address: Board of Osteopathic Medicine and Surgery  
PO Box 47866

Olympia, Washington 98504-7866

Website: <http://www3.doh.wa.gov/policyreview/>fax (360) 236-2406 by (date) 01/19/2007**Assistance for persons with disabilities:** ContactArlene Robertson by 01/19/2007TTY (800) 833-6388 or () 711**Date of intended adoption:** 01/26/2007(Note: This is **NOT** the effective date)**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**

The Board of Osteopathic Medicine and Surgery (Board) is proposing new rules to establish consistent and enforceable definitions of abuse and sexual misconduct with patients or former patients for osteopathic physicians and osteopathic physician assistants (practitioners). Because it is a greater challenge to clearly define some behaviors as moral turpitude, the proposed rules will allow the Board to take action on a broader range of inappropriate behaviors. The proposed rules will also help practitioners avoid inappropriate behavior and educate the public on expectations from their health care provider.

**Reasons supporting proposal:**

The proposed rules will define sexual misconduct and abuse, regarding practitioner/patient relationships. The Board's intent is to protect the public from practitioners who use their position to foster inappropriate conduct with patients. The proposed rules will create enforceable standards for the Board to take action against osteopathic physicians and osteopathic physician assistants who violate the sexual misconduct and patient abuse standards. The proposal responds to the Governor's Executive Order to promote patient safety and awareness.

**Statutory authority for adoption:**

RCW 18.57.005; RCW 18.130.050

**Statute being implemented:**

RCW 18.130.180

**Is rule necessary because of a:**

Federal Law?

☐ Yes ☒ No

Federal Court Decision?

☐ Yes ☒ No

State Court Decision?

☐ Yes ☒ No

If yes, CITATION:

DATE 12/04/06

NAME (type or print)

Blake Maresh

SIGNATURE

**CODE REVISER USE ONLY**CODE REVISER'S OFFICE  
STATE OF WASHINGTON  
FILED

DEC 6 2006

TIME

1046

WSR

06-24-138AM  
PM

TITLE  
Executive Director

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: (person or organization)  
Surgery

Department of Health-Board of Osteopathic Medicine and

☐ Private  
☐ Public  
☒ Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Arlene Robertson	310 Israel Rd SE, Tumwater, WA 98501	(360) 236-4945
Implementation....Arlene Robertson	310 Israel Rd SE, Tumwater, WA 98501	(360) 236-4945
Enforcement.....Arlene Robertson	310 Israel Rd SE, Tumwater, WA 98501	(360) 236-4945

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☐ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone

fax

e-mail

☒ No. Explain why no statement was prepared.

An SBEIS was not prepared under 19.85.030(1) because the proposed rule language does not impose costs to businesses within an industry.

Is a cost-benefit analysis required under RCW 34.05.328?

☒ Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name: Arlene Robertson

Address: PO Box 47866

Olympia, WA 98504-7866

phone (360) 236-4945

fax (360) 236-2406

e-mail [arlene.robertson@doh.wa.gov](mailto:arlene.robertson@doh.wa.gov)

☐ No: Please explain:

## NEW SECTION

### **WAC 246-853-600 Sexual misconduct. (1) Definitions:**

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the osteopathic physician-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the osteopathic physician and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

(b) "Osteopathic physician" means a person licensed to practice osteopathic medicine and surgery under chapter 18.57 RCW.

(c) "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, partners, parents, siblings, children, guardians and proxies.

(2) An osteopathic physician shall not engage in sexual misconduct with a current patient or a key third party. An osteopathic physician engages in sexual misconduct when he or she engages in the following behaviors with a patient or key third party:

- (a) Sexual intercourse or genital to genital contact;
- (b) Oral to genital contact;
- (c) Genital to anal contact or oral to anal contact;
- (d) Kissing in a romantic or sexual manner;
- (e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment;
- (f) Examination or touching of genitals without using gloves;
- (g) Not allowing a patient the privacy to dress or undress;
- (h) Encouraging the patient to masturbate in the presence of the osteopathic physician or masturbation by the osteopathic physician while the patient is present;
- (i) Offering to provide practice-related services, such as medication, in exchange for sexual favors;
- (j) Soliciting a date;
- (k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the osteopathic physician.

(3) An osteopathic physician shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the osteopathic physician:

- (a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or
- (b) Uses or exploits privileged information or access to privileged information to meet the osteopathic physician's personal or sexual needs.

(4) To determine whether a patient is a current patient or a former patient, the board will analyze each case individually, and will consider a number of factors, including, but not limited to, the following:

- (a) Documentation of formal termination;
  - (b) Transfer of the patient's care to another health care provider;
  - (c) The length of time that has passed;
  - (d) The length of time of the professional relationship;
  - (e) The extent to which the patient has confided personal or private information to the osteopathic physician;
  - (f) The nature of the patient's health problem;
  - (g) The degree of emotional dependence and vulnerability.
- (5) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.
- (6) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.
- (7) A violation of any provision of this rule shall constitute grounds for disciplinary action.

#### NEW SECTION

**WAC 246-853-610 Abuse.** (1) An osteopathic physician commits unprofessional conduct if the osteopathic physician abuses a patient or key third party. An osteopathic physician abuses a patient when he or she:

- (a) Makes statements regarding the patient's body, appearance, sexual history, or sexual orientation that have no legitimate medical or therapeutic purpose;
- (b) Removes a patient's clothing or gown without consent;
- (c) Fails to treat an unconscious or deceased patient's body or property respectfully;
- (d) Engages in any conduct, whether verbal or physical, which unreasonably demeans, humiliates, embarrasses, threatens, or harms a patient.

(2) A violation of any provision of this rule shall constitute grounds for disciplinary action.

## NEW SECTION

### **WAC 246-854-200 Sexual misconduct. (1) Definitions:**

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the osteopathic physician assistant-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the osteopathic physician assistant and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

(b) "Osteopathic physician assistant" means a person licensed to practice osteopathic medicine and surgery under chapter 18.57A RCW.

(c) "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, partners, parents, siblings, children, guardians and proxies.

(2) An osteopathic physician assistant shall not engage in sexual misconduct with a current patient or a key third party. An osteopathic physician assistant engages in sexual misconduct when he or she engages in the following behaviors with a patient or key third party:

- (a) Sexual intercourse or genital to genital contact;
- (b) Oral to genital contact;
- (c) Genital to anal contact or oral to anal contact;
- (d) Kissing in a romantic or sexual manner;
- (e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment;
- (f) Examination or touching of genitals without using gloves;
- (g) Not allowing a patient the privacy to dress or undress;
- (h) Encouraging the patient to masturbate in the presence of the osteopathic physician assistant or masturbation by the osteopathic physician assistant while the patient is present;
- (i) Offering to provide practice-related services, such as medication, in exchange for sexual favors;
- (j) Soliciting a date;
- (k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the osteopathic physician assistant.

(3) An osteopathic physician assistant shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the osteopathic physician assistant:

- (a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or

(b) Uses or exploits privileged information or access to privileged information to meet the osteopathic physician assistant's personal or sexual needs.

(4) To determine whether a patient is a current patient or a former patient, the board will analyze each case individually, and will consider a number of factors, including, but not limited to, the following:

(a) Documentation of formal termination;

(b) Transfer of the patient's care to another health care provider;

(c) The length of time that has passed;

(d) The length of time of the professional relationship;

(e) The extent to which the patient has confided personal or private information to the osteopathic physician assistant;

(f) The nature of the patient's health problem;

(g) The degree of emotional dependence and vulnerability.

(5) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.

(6) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

(7) A violation of any provision of this rule shall constitute grounds for disciplinary action.

#### NEW SECTION

**WAC 246-854-210 Abuse.** (1) An osteopathic physician assistant commits unprofessional conduct if the osteopathic physician assistant abuses a patient or key third party. An osteopathic physician assistant abuses a patient when he or she:

(a) Makes statements regarding the patient's body, appearance, sexual history, or sexual orientation that have no legitimate medical or therapeutic purpose;

(b) Removes a patient's clothing or gown without consent;

(c) Fails to treat an unconscious or deceased patient's body or property respectfully; or

(d) Engages in any conduct, whether verbal or physical, which unreasonably demeans, humiliates, embarrasses, threatens, or harms a patient.

(2) A violation of any provision of this rule shall constitute grounds for disciplinary action.